IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 484 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MIRKHAN LEBABHAI SIPAI - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR RJ GOSWAMI for the Applicant.
Ms.Nandini Joshi, Addl. PUBLIC PROSECUTOR for Respondent no.1.
MR DINESH B PATEL for Respondent no.2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 17/07/2006

ORAL JUDGMENT

The present Criminal Revision Application has been preferred against the judgment and order dated 1st July, 2005 in Criminal Appeal No. 34 of 1998 passed by

the learned Additional Sessions Judge, Banaskantha at Palanpur, whereby the appeal preferred by the present applicant has been dismissed and thereby confirmed the order dated 6th July, 1998 in Criminal case no. 5538 of 1994, passed by the learned Chief Judicial Magistrate, Palanpur, whereby the present applicant has been convicted and sentenced to undergo simple imprisonment for four months and ordered ot pay a fine of Rs. 1000/-, in default further simple imprisonment of 30 days, for the offence punishable under section 408 of the Indian Penal Code.

2. The learned advocate for the applicant mainly submitted that the amount involved in the present case is Rs. 18200/- which has already been deposited with the newly added party, that is, respondent no. 2. It is also submitted by the learned advocate for the applicant that an amount of Rs. 4000/- being interest on the principal amount has also been deposited with respondent no. 2 during pendency of the present Revision Application. This fact has also been admitted by the learned counsel for respondent no. 2. Thus, the amount involved in the case has already been paid by the applicant. It is also submitted by the learned advocate for the applicant that the applicant has also undergone simple imprisonment for seven days. There are no antecedents. In view of these

facts, it is submitted that the sentence already undergone may be awarded for the offence punishable under section 408 of the Indian Penal Code, especially in view of the case law decided by the Hon'ble Supreme Court in the case **Jayanmti De and another vs. Abani Kanta Barat and thers reported in AIR 2000 SC, 3578.**

3. I have also heard the learned Additional Public Prosecutor who has submitted that looking to the evidence on record and the fact that the present applicant had misappropriated public money, the sentence awarded by the trial court is absolutely true and correct and therefore, the same may not be altered by this Court.

4. I have also heard the learned advocate for respondent no. 2 who has submitted that the respondent no. 2 has already received the amount of Rs. 18,200/- during pendency of the appeal before the learned Additional Sessions Judge, Banaskantha at Palanpur and the amount of Rs. 4000/- towards interest has also been paid during pendency of the Revision Application before this Court.

5. Having heard the learned counsel for both the sides and looking to the evidence on record, in my view,

the order of conviction passed by the courts below is true and correct. Looking to the evidence of witness Shamalbhai Godadbhai at exh.7, who is the complainant, whose deposition is corroborated by the deposition of the auditor Hirabhai Shankarbhai Chaudhary, at exh.12, the order of conviction is absolutely in consonance with the evidence on record. There are consistent findings of facts by both the courts below. No error has been committed by the trial court in convicting the present applicant for the offence punishable under section408 of the Indian Penal Code. There are no omissions or contradictions in the depositions of the prosecution witnesses.

6. Thus, the order of conviction made by the trial court and confirmed by the lower appellate court for the offence punishable under section 408 of the Indian Penal Code against the present applicant is absolutely true and correct. The prosecution has proved the offence beyond reasonable doubt. Now, so far as quantum of punishment is concerned, looking to the facts and circumstances of the case, especially the fact that the amount of Rs.18200/- has already been deposited by the present applicant during pendency of the appeal before Sessions Court, Banaskantha at Palanpur, and the fact that the amount of Rs.4000/- towards interest upon that amount has also been

paid before respondent no. 2 pending the present Revision Application and in view of the judgment delivered by the Hon'ble Supreme Court in the case of **Jyanmti De and another vs. Abani Kanta Barat and others reported in AIR 2000 SC, 3578,** the sentence awarded to the applicant by the learned Chief Judicial Magistrate vide judgment and order dated 6th July, 1998 in Criminal case no. 5538 of 1994 and confirmed vide judgment and order dated 1st July, 1005 in Criminal Appeal NO. 34 of 1998 by the learned Additional Sessions judge, Banaskantha at Palanpur is hereby altered and is reduced to the extent to which the present applicant has already undergone. In view of this facts and circumstances, this Revision Application is partly allowed. The quantum of sentence is altered and whatever has undergone is awarded to the present applicant. Rule made to the aforesaid extent.

(D.N.Patel,J)

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